2985

SUPREME COURT OF THE UNITED STATES.

No. 208.

HENRY D. HUFF, JOHN BULLEN, AND SAMUEL HALE, PLAINTIFFS IN ERROR,

vs.

CHAMPION I. HUTCHINSON, WHO SUES FOR THE USE OF WILLIAM W. HURLBURT, JOSEPH A. SWEETZER, PHILIP VAN VALKENBURGH, AND GEORGE S. PHILLIPS.

IN ERROR TO THE DISTRICT COURT, UNITED STATES, FOR THE DISTRICT OF WISCONSIN.

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[GIDEON, Print.]

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UNITED STATES OF AMERICA,
District of Wisconsin, ss.

I, Benjamin K. Miller, clerk of the district court of the United States of America, for the district of Wisconsin, do hereby certify, that I have compared the writings annexed to this certificate, and are true copies of their respective originals now on file and remaining of record in my office.

In testimony whereof I have hereunto set my hand and duly affixed the seal of said court, at the city of Milwaukie, in the said district of Wisconsin, this fifth day of November, in the year of Lord one thousand eight hundred and fifty-one, and of the independence of the said United States the seventy-sixth.

[SEAL.]

BENJ'N K. MILLER, *Clerk.*

I, Andrew G. Miller, judge of the district court of the United States of America, for the district of Wisconsin, do hereby certify, that the foregoing attestation by Benjamin K. Miller, the clerk of said court, is in due form, and by the proper officer.

Witness my hand at the city of Milwaukie, in the State of Wisconsin, this fifth day of November, 1851.

A. G. MILLER.

UNITED STATES OF AMERICA,
District of Wisconsin.

Pleas before the honorable Andrew G. Miller, judge of the district court of the United States of America, for the district of Wisconsin.

Be it remembered, that on the thirtieth day of September, in the year of our Lord one thousand eight hundred and fifty, came Champion I. Hutchinson, who sues for the use of William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips, and filed in the clerk's office of said court at the city of Milwaukie, in said district of Wisconsin, a prœcipe for a summons against Henry D. Huff, John Bullen, and Samuel Hale, as follows:

UNITED STATES COURT.

CHAMPION I. HUTCHINSON, for the use of William W. Hurlbert, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips,
vs.
HENRY D. HUFF, John Bullen, and Samuel Hale.

Please issue summons in the above entitled cause in a plea that the

said defendants render unto the said Champion I. Hutchinson, for the use aforesaid, the sum of eleven thousand two hundred dollars, ($11,200,) which they owe to and unjustly detain from him; to his damage five hundred dollars, ($500,) returnable the first Monday of October next.

September 30, 1850. O. S. HEAD,
Attorney for plaintiff.

To GEORGE S. WEST, esq., *clerk, &c.*

Whereupon a summons issued returnable the first Monday of October next, as follows:

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

The President of the United States of America, to the marshal of the district of Wisconsin, greeting:

You are hereby commanded to summon Henry D. Huff, John Bullen, and Samuel Hale, to appear before the district court of [SEAL.] the United States, for the district of Wisconsin aforesaid, at Milwaukie, on the first Monday of October next ensuing, and then and there to answer unto Champion I. Hutchinson, for the use of William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburg, and George S. Phillips, in a plea that they render unto the said Champion I. Hutchinson, for the use aforesaid, the sum of eleven thousand and two hundred dollars, which they owe to and unjustly detain from him, to his damage five hundred dollars, which shall then and there be made to appear; and of this writ make due return.

Witness the honorable Andrew G. Miller, judge of the said court, at Milwaukie, in the said district of Wisconsin, the thirtieth day of September, in the year of our Lord one thousand eight hundred and fifty, and of the independence of the United States the seventy-fifth.

GEO. S. WEST, *Clerk.*
O. S. HEAD, *Attorney.*

The said summons was returned by the marshal with his return endorsed thereon, as follows:

"DISTRICT OF WISCONSIN, *ss.*

I do hereby certify and return, that I did, on the first day of October, A. D. 1850, personally served the within summons upon John Bullen, and Samuel Hale, two of the defendants within named, by reading the same to them, and by leaving with each of the said defendants a true copy thereof. And also that I did on the same day serve the same upon the within named defendant, Henry D. Huff, by leaving a true copy thereof at his last usual place of residence; the said Huff not being found in person within the jurisdiction of this court; and that such service was made in the city of Kenosha, and district aforesaid.

LESTER H. COTTON, *Marshal,*
By WALLACE MYGATT, *Dep. marshal.*"

And afterwards, to wit, on the fourteenth day of said month of October, A. D. 1850, came the said defendants, by their attorneys, Messrs. Chatfield and Touslee, and filed with the clerk of said court a notice of an appearance, as follows:

District court, United States, for district of Wisconsin.

CHAMPION I. HUTCHINSON for the use of William W. Hurlburt, Joseph A. Sweetser, Philip Van Valkenburgh, and Geo. S. Phillips,
vs.
Henry D. Huff, John Bullen, and Samuel Hale.

To George S. West, clerk, &c.

Please to enter our appearance as attorneys for the defendants, Henry D. Huff, John Bullen, and Samuel Hale, in the above entitled cause, and oblige yours, &c.

CHATFIELD & TOUSLEE.

Milwaukie, 14th October, 1850.

And afterwards, to wit, on the twenty-third day of December, A. D. 1850, came the said plaintiff by his said attorney and filed his declaration, as follows:

District court of the United States, for the district of Wisconsin.

Of the first Monday of October, A. D. one thousand eight hundred and fifty.

DISTRICT OF WISCONSIN, *ss.*

Champion I. Hutchinson, late marshal of said district of Wisconsin, who sues for the use of William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips, citizens of the State of New York, plaintiff in this suit, by Orson S. Head, his attorney, complains of Henry D. Huff, John Bullen, and Samuel Hale, citizens of the State of Wisconsin, defendants, of a plea that they render unto said plaintiff the sum of eleven thousand two hundred dollars, which they owe to and unjustly detain from him.

For that whereas heretofore, to wit, on the seventh day of March, in the year one thousand eight hundred and fifty, at the district of Wisconsin, the said William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips, sued and prosecuted out of the district court of the United States, for the district of Wisconsin, against the said defendant, Henry D. Huff, a certain writ, called a writ of attachment, directed to the marshal of said district of Wisconsin, by which said writ the said marshal of the said district was commanded to attach so much of the lands, tenements, goods, chattels, moneys,

and effects of the said Henry D. Huff not exempt from execution, wheresoever the same might be found within his district, as would be sufficient to satisfy the demand of the said William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips, and safely keep the same to satisfy any judgment that might be recovered by the said William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips, and also to summon the said Henry D. Huff to be and appear before the said district court at Milwaukie, on the first Monday of April (then next) ensuing, and then and there to answer unto the said William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips, in a plea of trespass on the case upon promises to their damage five thousand dollars, which then and there should be made to appear, and of the said writ to make due return ; which said writ afterwards and before the return thereof, to wit, on the eleventh day of March, in the year last aforesaid, to wit, at the district of Wisconsin aforesaid, was delivered to the said plaintiff, who then and from thence, until and at and after the time of the making of the writing obligatory hereinafter mentioned, was marshal of the district of Wisconsin, in due form of law to be executed; by virtue of which said writ the said plaintiff, so being marshal of the district of Wisconsin as aforesaid, afterwards and before the return of the said writ, to wit, on the day and year last aforesaid, and in said district of Wisconsin as such marshal, to wit, at the city of Kenosha, in said district of Wisconsin, did attach divers goods and chattels of the said Henry D. Huff not exempt from execution, then and there being, to wit, nine and $\frac{3}{4}$ yds of French cassimere, $26\frac{7}{8}$ yds cassimere, $15\frac{1}{2}$ yds fancy cassimere, $7\frac{1}{2}$ yds full cloth, $16\frac{1}{2}$ yds merino cassimere, $19\frac{1}{2}$ yds green cassimere, 19 yds croton cloth, 19 yds black satinett, 9 yds broad cloth, $1\frac{1}{2}$ yds mixed cloth, $4\frac{1}{2}$ yds mixed satinett, 3 yds Kentucky jean, 3 yds blk cassimere, $4\frac{1}{2}$ French cloth, $20\frac{1}{2}$ yds satinett, 20 yds cassimere, $2\frac{1}{4}$ yds broad cloth, 5 yds blk cloth, 6 yds blk cloth, 3 yds fancy cassimere, 8 yds fancy cassimere, $2\frac{1}{2}$ yds summer cloth, $129\frac{1}{2}$ yds hard times, 14 yds French cassimere, $13\frac{1}{2}$ yds French cassimere, $19\frac{1}{2}$ yds cassimere, 14 yds blk cassimere, $6\frac{3}{4}$ yds striped cassimere, 16 yds mixed cassimere, 15 yds fancy cassimere, 45 yds sheep grey, 4 yds blk cot jean, $4\frac{1}{4}$ yds Ina. jean, $172\frac{1}{2}$ yds cot jean, $10\frac{1}{2}$ yds Kentucky jean, 6 yds French cassimere, $23\frac{1}{2}$ yds cot tweed, $5\frac{1}{2}$ yds summer plaid, $9\frac{1}{2}$ yds French cloth, $17\frac{1}{4}$ yds grey cloth, 38 yds mixed satinett, 31 yds grey cloth, 2 yds fancy cass., 3 yds cot stripe, $26\frac{1}{2}$ yds corderoy, $12\frac{1}{2}$ yds moleskin, $37\frac{1}{2}$ plaid fustian, $2\frac{3}{4}$ yds summer cloth, $35\frac{3}{4}$ yds Ky jean, 11 yds blk broadcloth, $7\frac{1}{4}$ yds olive cloth, $4\frac{3}{4}$ yds brodcloth, $13\frac{7}{8}$ yds blk cloth, 4 yds olive cloth, $9\frac{1}{4}$ yds blk cass, $1\frac{1}{4}$ yds French brodcloth, 9 yds blue brodcloth, $8\frac{1}{2}$ yds blk brodcloth, $6\frac{1}{2}$ yds blue cloth, $3\frac{3}{8}$ yds brodcloth, 20 yds blk brodcloth, $3\frac{1}{4}$ yds beaver cloth, $3\frac{1}{4}$ yds fancy cloth, 2 yds fancy cloth, 14 yds Orford cloth, $4\frac{1}{2}$ yds broadcloth, 8 yds blk brodcloth, 7 yds pilot cloth, $16\frac{1}{2}$ yds pilot cloth, 18 yds blue cloth, 7 yds blue cloth, $2\frac{1}{4}$ yds blk brodcloth, $1\frac{1}{2}$ yds blue cloth, $6\frac{3}{4}$ French cloth, $17\frac{3}{4}$ yds blk French cloth, $38\frac{1}{4}$ yds

brodcloth, 18¾ yds blk cass, 14½ yds French cloth, 1⅛ yds mixed brodcloth, 32 yds Kent jeans, 4¼ yds stripe Alapacca, 14⅓ yds figd Alapacca, 28½ yds stripe do, 22¼ yds stripe do, 4⅛ yds drab do, 12 yds do, 77¾ yds blue do, 13⅓ yds blk do, 24¼ yds brd do, 23⅓ yds blk do, 3¼ yds blue do, 76½ yds blk do, 21¼ yds blk Alapacca, 17¼ yds fig gro dereap, 19½ yds plain do, 95¾ yds blk Alpacca, 2¾ yds brown do, 5 yds cold do, 31½ yds drab do, 3½ yds blue do, 12¾ yds blue plaid, 1¼ yds blk plaid, 14 yards col'd do, 9 yds figd do, 3¾ yds plain do, 7¾ yds figd do, 12¾ yds stripe do, 7½ yds plain do, 29 yds green do, 28¼ yds blk figd do, 28 yds blk do, 29¾ yds blk do, 6½ yds blk bombazine, 29¼ yds blk do, 16¾ yds blk wool plaid, 21¾ yds plaid Alapacca, 19 yds stripe do, 3½ yds figd do, 23 yds figd blk do, 4¼ yds green do, 29⅓ yds plain blk Alapacca, 2½ yds blk cassimere, 18¾ yds drab merino, 19½ yds green do, 19 yds blue do, 15⅓ yds drab do, 48¾ col'd do, 9¼ yds blk do, 4½ bro do, 5½ yds col'd do, 1¾ yds blk do, 2¾ yds blk thibet cloth, 15½ yds brod mohair cloth, 29¾ yds blk delaine, 19 yds croton cloth, 84 yds blk serge, 20½ yds moreen, 38¼ yds drab do, 27 yds circassion, 11 yds tabby velvet, 37 yds wool plaid linsey, 46¾ yds cot plaid linsey, 15 yds plaid linsey, 14½ yds do, 34 yds cot plaid, 156 yds cot plaid, 7¼ yds wool and cot plaid, 17¾ yds Scotch plaid, 5¼ yds do, 46½ yds cot and wool plaid, 5¾ yds vesting, cot and wool, 3⅛ yds vesting, 2⅝ yds cotton vesting, 2⅕ yds do cot and wool, 5¼ yds do cot, 6⅜ yds do, cot and wool, 45⅜ yds drab delaine, 487 fig delaine, 31 yds figd do, 207½ yds figd Cashmere, 8 yds cot plaid, 18½ yds cot and wool plaid, 13½ yds do, 3¾ yds do, cot and wool stripe, 6½ yds do, cot and wool plain, 15¼ yds French poplin, 20 yds cot and plain coating, 2¼ yds silk oilcloth, 1½ yds serge, ¾ yd circassian, 5 yds merino, 79 yds lawns, 15⅛ yards figd muslin, 10⅓ yds stripe muslin, 10 yds m delaines, 43¼ yds berege, 342⅕ yds col'd cambric, 161¼ yards blk cambric, 391 yds calico, 1,889¼ yds calico, 1,022¼ yds calico, 275 yds curtain calico, 841 yds gingham, 22¾ yds poplin, 24¼ yds braize, 32 yds cambric, 32 yds do, 3¾ yds gingham, 2 yds calico, 6½ yds merino, 60 yds blk delaine, 3¼ yds gingham, 192⅕ yds blue drill, 51¾ yds diaper, 12¼ yds shirting, 11 yds blue jean, 265 yds shirting, 160 yds bleached shirtings, 6¾ yds blue drill, 4 yds shirting, 113¾ yds bleach shirtings, 96½ yds apron check, 165¼ yds apron check and hkfs, 69 yds plain cloth, 100⅕ yds white flannel, 48¾ yds Salsbury flannel, 25½ yds table linen, 14¾ yds ⅘ diaper, 14 linen table spreads, 20 yds cot flannel, 22 yds table linen, 43¼ yds bleach towelling, 40¼ yds do "cotton," 31½ yds do, 17¼ yds brown Holland, 17¼ yds cloth, 28 yds canvass, 35 yds do, 84½ yds cambric, 3¾ selisia, 41¾ yds cambric, 15 yds curtain calico, 31¼ yds padding, 19 yds wiggin, 9 yds bro linen, 149¾ yds selisia, 1½ yards cambric, 7 yds bleach cotton, 49¾ yds blk wiggin, 38 yds white do, 17 yds grass shirting, 59 linen hdkfs, 5¾ yds linen, 8 dozen linen hdfs, 13¼ yds white linen, 43 yds boraze, 11 yds blk lace, 8½ yds crape do, 3¾ yds silk crape, 3½ yds crape, 6 yds crape deany, 35⅝ yds blk ladies dressing, 11 yds book muslin, 5 yds bishop lawn, 4¾ yds do, 37⅜ yds do, 21½ yds muslin, 16 yds lining, 10¼ yds mull, 3 yds do, 5 yds muslin, 14¾ yds

cambric muslin, 2½ yds blk lace, 2½ yds blea shirtings, 12¼ yds stripd cambric, 14¾ yds stripd and bord cambric, 262¼ yds plain cambric, 5½ yds book muslin, 12 collars, 50½ yds diaper, 1 ps diapers, 30 yds diaper, 6 ps diaper, 25¾ yds diaper, 5 yds crash, 7¾ yds silk sattin, 1¼ yds blk serge, 47⅞ yds Florence silk, 34½ yds blk silk, 4¾ yds cold sattin, ⅞ yds cot and silk rlmb, 16½ yds blk silk, 1¼ yds blk gauze, 1 yd blk velvet, 12 yds striped silk, 2¼ yds figd selisia, 13¾ yds stripe silk, 12 yards blue silk, 1⅝ blk sattin, 1¾ yds bonnet sattin, 1½ yds Florence sattin, ¾ yards col'd sattin, ⅞ yd white sattin, damd, 18¾ yds stripe silk, 18¼ yds blk sattin, 9 yds black silk, 14½ yards Florence silk, 3½ yds white sattin, 2 yds figd silk, 39½ yds plain silk, 4½ yds do, 2 yds rlmb, 4⅝ yds silk velvet, 1¾ yds black silk velvet, 8⅝ yds cold silk velvet, 4½ mad vesting, 27⅞ yds plain vesting, ⅞ yd figd vesting, 15 yds tabby velvet, 46⅞ yds black lace, 18½ yds white lace, 4⅛ yds curtain lace, 15 yds shirting, 4 skirts, 17 gingham hkfs, 27 hkfs, 3 yds red delaine, 4 Leroy hkfs, 2 dress hdkfs, 11 shawls, 34 shawls, 3 table covers, 4 yds cambric, 7 yds cotton lace, 11¼ yds blk cor lace, 85¾ yds white cot lace, 42¾ yds cap lace, 4¾ yds do, 10 yds dimity, ¼ yd lace, 10½ yds bonnet lawn, 55 yds dress lawn, 40¾ yds dress plaid, 19¾ yds lawn, 6 blk lace veils, 88 pr suspenders, 39 pr gloves, 11 blk silk hkfs, 16 plaid silk hkfs, 35 silk hkfs, 5½ doz worsted mitts, 30 pr worsted mitts, 1 crape hkf, 19 dross hkfs, 2 fancy ties, ½ fancy ties, 12 lace wreaths, 12 yds edging, 62¾ yds silk edging, 92¼ yds footing, 1 wool jacket, 2 neck cravats, 1 belt, 4 pr cot gloves, 9 pr worsted gloves, 15 doz knit pins, 4 set knit pins, 10 pr worsted mitts, 5 pr silk mitts, 8 p cot gloves, 9 p worsted gloves, 5 p white silk gloves, 8 p blk cotton do, 7 p bss linen do, 6 p worsted do, 5 p white figd silk do, 12 p worsted do, 11 p cotton do, 7 p wool do, 7 p blk silk do, 5 p white mitts, 3 pr do, 3 p misses gloves, 9 p cotton do, 5 p white silk gloves, 4 p blk do, 10 p misses worsted do, 3 p linen gloves, 6 p worsted do, 9 p cot do, 8 p bss linen, 1 p blk silk hose, 8 p brd cot, 8 p blk cot, 4 p white cot do, 7 p blk cotton do, 12 p blk do, 12 p blk hose, 6 p white do, 19 p blk do, 5 p white do, 11 ps blk do, 7 p white do, 10 p blk worsted do, 25 p elastic, 20 p worsted hose, 75 p cot hlf hose, 29 p cot hose, 6 p wool ½ hose, 8 p worsted do, 47 p cot do, 10 p worsted do, 6 p cot do, 155 p cot ½ hose, 5 lbs blk linen thread, 17 lbs cot thread, 10 lbs knit cot, 2¾ lbs sewing silk, 19 cords and tassels, 132 pkgs buttons, 46 boxes hooks and eyes, 70 dozen white spool thrd, 20 dozen cold do, 42 box hooks and eyes, 5 packs pins, 10 boxes nett cord, 5 boxes cot thread, 2½ boxes linen thread, 2 box knit cot, 2½ box wool yarn, 63½ box cot yarn, 1½ p foundation, 13 yds bed drilling, 151½ yds cot flannel, 30 yds sheeting, 12¾ yds cot flannel, 391½ yds cotton, 32 yds cot bagging, 53 yds cot drilling, 10 yds sheeting, 27½ doz spool thread, 6 doz cold thrd, 11¼ doz wadding, 14 p silk bonnet wire, 8 p cot do, 1 p ribbon do, 5 Victoria diaper pins, 16 ps carpet binding, 3 lbs cotton thread, 2 ps galoon binding, 42 sets knit pins, 8 p cap wire, 1 p mitts, 2 pack pins, 1 box cornation cord, 10 lawn hkfs, 2 silk vails, 4 yds blk crape, 2 box welting cord, ¾ box twist, 11 doz tapes, 5 1/2 doz side combs, 3 lbs linen

thread, 1½ dozen roll tape, 2 dozen furniture do, 2¾ doz side combs, 7½ doz back combs, 9 combs, 2 do tapes, 1 bunch tape, 19 yds rag carpet, 3 doz tape, 4 knit drawers, 1 knit cot do, 40 sets vest stays, 1 great gross button moulds, ½ dozen oz worsted, 124 yds carpeting, 3 1/16 lbs linen thrd, 45 hats, 14 oil caps, 13 cloth caps, 9 plush do, 6 caps, 25 plush caps, 1 cap, 20 hair caps, 1½ lb nutmegs, 10½ lbs camphor, 11 muffs, 2 fur caps, 2 bonnets, 19 bonnets, 5 p water proof boots, 1 p calf boots, 4 p kip boots, 1 p kip boots, 12 stocks, 31 com brogans, boys, 19 Adam's arithmetic, 4 p men's kip brogans, 7 school readers, 1 Sander's 4th reader, 6 p kip brogans, 12 p youth's brogans, 4 p men brogans, 1 p men's brogans, 34 p child'n boots, strap'd, 99 school readers, 1st book, 39 elementary spel books, 500 envelopes, 11 small boxes wafers, 1 large do, 43 blank books, 45 p woman's bootees, 24 p miss boots, 5 p morocco boots, 4 p miss boots, 16 p peg and lined buskins, 12 p gents ties, 48 pr slips, 32 pr walking shoes, 8 p slips, 21 p corks, 3 p do, 4 p miss slips, 19 pr slips and ties, 2 p misses gaiters, 2 p knit drawers, 4 p cocks, 1 doz combs, 8 p men's rubber shoes, 3 p woman's rubber shoes, 8 p do, 4 reams cap paper, 1 ream letter paper, 27 p mittens, ½ ream letter paper, 25 p socks, 2 reams cap paper, 3 qr letter paper, 2 ream cap paper, 2 p buck gloves, 5 razor strops, 2 razors, 3 p buck gloves, 58 p B S mittens, 71 knives, 12 1/2 ream wrap paper, 2 doz quill fans, 2 gross laces, 3 p. spring pumps, 2 peg floats, 1 chisel, 81 yd bagging, 4 6/16 whale bone, 2 doz sheet pasteboard, 8 boxes artificials, 18¾ lb wool yarn, 2 doz whip lashes, 20 look'g glasses, 2 white ewers and basin, 3 blue do, 8 light blue pitchers, 5 dark blue do., 22 pitchers, 9 dark blue pitchers, 2 sprig do, 18 light blue do, 2 white do, 11 red and blue, 14 light blue bowls, 12 dark blue do, 3 flowing blue do, 12 common blue do, I white chamber and cover, 6 cov'd dishes, 3 pink tea setts, 14 tea setts, 19 glass jugs, 4 doz com teas, 19 doz blue and white teas, 1 china sett, 5 pitchers, 7 spice jars, 8 cov'd dishes, 47 bakers, 24 platters, 7¾ doz plates, 6¾ do, 2½ doz cups, 33 bake plates, 6 small bot castor oil, 5 bot olive oil, 2 glass chimneys, 16 thick bot tumbers, 6 8/12 doz tumblers, 1 doz cov'd glass dishes, 14⅓ doz tumblers, 28 castor bottles, 2 castors, 2 doz pepper, In, 20 box mustard, 34 pr spice, 15 glass setts, 3 glass sand boxes, 11 glass pitchers, 6 glass goblets, 9 tumbers, 11 glass sm'l plates, 4 1/12 doz small plates, 9 glazed cups, 9 pr woollen blankets, 13 pr dark blankets, 25 yds drilling, 21 yds cot flannel, 43 yds apron check, 55 yds do, 1½ yds grass sheeting, 3 dust brushes, 1 jacket worsted, 3 caps do, 42 comforters, 5 p suspenders, 3 p do, 2 p thick boots, 7 glass lanterns, 3 glass do, 2 p steelyards, 26 whip lashes, 2 pr sheep shears, 1 milk strainer, 1 lb sulphur, 6 lbs copperas, 30 lbs litharege, 27 box glass, 8 lbs Paris green, 300 lbs nails, 125 lbs wrot nails, 45 lbs saltpetre, 32 lbs epsom salts, 35 lbs glober salts, 4 yds cloth, 6 lbs sulphur, 40 lbs French yellow, 4 lbs indigo, 25 lbs alum, 33 lbs ginger, 110 lbs coffee, 95 lbs do, 18 lbs do, 68 lbs Y H tea, 25 lbs H S K tea, 6 lbs tea, 12 lbs Y H tea, 45 lbs tea, 24 lbs hyson tea, 70 lbs powdered w sugar, 75 crushed do, 203 lbs bro maple sugar, 70 lbs logwood, 80 madder, 160 lbs rosin, 124 lbs

white lead, 140 lbs rice, 40 lbs saleratus, 36 lbs coffee, 9⅛ boxes glass, 9 lights glass, 120 lbs V red, 90 lbs S. brown, 100 lbs cam wood, 119 yellow ochre, 25 lbs lob, damg'd, 140 lbs cot yarn, 287 lbs tobacco, 8 lbs carpet warp, 1 keg corks, 15 lbs cot yarn, 13 pr kip boots, 8 pr thick do. 13 pr boys kip do, 10 p boys thick do, 27 pr boys thick do, 2 axes, 9 lbs castile soap, 4 white wash brushes, 4 ½ bushel measures, 2 lbs wrap twine, 1 hank cord, 11⅓ lbs cord, 16 lbs scotch snuff, 14 lbs mcboy snuff, 15 lbs chocolate, 9 lbs powder and cans, 1 pail, 9 lbs turnip seed, 1 box for seed, 3 clothes baskets, 6 market do, 22 lbs twine, 24 lbs sheep twine, 5 wash bowls, 2 night lamps, 1 spitton, 21 slates, 8 trace chains, 30 wood bowls, 3 sieves, 15 coffee mills, 9 lbs spice, 6 lbs camphor, 35 curry combs, 7 sau strainers, ½ doz C S hatchets, 5 hatchets, 3 iron S and tongs, 1 brass, 2 cow bells, 4 horse brushes, 6 planes, 10 scrub brushes, 4 shoe brushes, 3 bit stocks, 11 iron candle sticks, 4 lamp fillers, 2 lbs beeswax, 2 lbs linen twine, 1 lb nut galls, 1¼ lbs annatto, 3¼ lbs sugar lead, 3 lbs rotten stone, 4 lbs emery, 4 $\frac{8}{10}$ doz cosmetic soap, 1⅓ doz military soap, 34 lbs candle wicks, 4 p candle snuffers, 2 hanks rope, 1 p webbing, 5 lb sad iron, 2 lbs crome green, 2 lbs vitriol, 133 bot ink, 9 ink stands, 2 ink stands, 3 bot varnish, 6 varnish brushes, 3 varnish brushes, 1 paint brush, 1 jan blade, 12 hammers, 1 molasses gate, 34 pr spice, 2 pewter cocks, 7 razor strops, 3 shoe hammers, 12 hammers, 6 doz sail needles, 300 ps tacks, ½ gross tea spoons, 6 doz fig'd iron spoons, 5 setts G S tea spoons, 4 setts table spoons, 19 brt table spoons, 11 iron plated tea spoons, 7 doz brt plated tea spoons, 12 saw blades, 1 spittoon, 4¼ lbs crome yellow, 4 flat files, 18 flat do, 3½ doz saw files, 3 wood rasps, 6 lbs shoe thread, 2½ doz gimblets, 1½ lbs wrap twine, 7½ doz butts, 133 $\frac{5}{10}$ doz butts, 4 unche butts, 31 bpkgs screws, ¼ doz R locks, 16 padlocks, 1 morticed locks, 5 rim do, 12 chest do, 140 grs augers, 14 chest locks, 4 chest do, 7½ setts knives and forks, 6 butcher knives, 3 pewter cocks, 1½ setts knives and forks, 7 butcher knives, 3½ lbs vermillion, 222 qr auger bitts, 10 p brass buttons, 3 mahogany knobs, 14 rosewood knobs, 1 knob lock, 12 p blind fastenings, 9 mineral knobs, 6 butts, 6 locks, 6 doz soap, 9 coal shovels, 6 dung forks, 6 scoops, 1 stable shovel, 3 saws, 5 lbs wadin, 20 lbs wrap twine, 9½ lbs nutmeg, 300 lbs cod fish, 531 lights sash, 6 saw frames, 4 iron bound kegs, 2 iron bound buckets, 1 keg, 11 bush beans, 156¼ lbs flax rope, 3 brt tea pots, 1 bronz'd tea setts, 1 pig flont, 700 nails, 7 lbs candles, 83 lbs coffee, 160 lbs coffee, 127 lbs spice, 106 lbs pepper, 160 lbs coffee, 28 lbs spice, 208 lbs coffee, 12 axe helves, 2 hlf bush measures, 6 meal bags, 78 yds bagging, 33 yds burlaps, 30½ yds bagging, 228 yds cotton, 43 yds burlaps, 8 yds bags, 80 yds do, 55¾ yds drilling, 439 yds cotton, 1,231¾ yds cotton, 22½ yds table diaper, 6 yds table burlaps, 29 yds stripe shirting, 390 yds bro ticking, 202½ yds stripe shirting, 24½ yds stripe denin, 224¼ yds tow cloth, 81 yds blue drill, 100¼ yds blue drill, 14¼ yds denin, 4 nests measures, 8 half bushels, 1 peck measure, 2 two qt measures, 1 half bush do, 486 gall stone ware, 12 bush beans, 12 mats, 20 lbs lamp black, 9 churns, 1 bedstead, 11 cradles, 51 brooms, 48 doz paper tobacco, 240

lights sash, 4 wash tubs, 7 pails, 2 rulers, 10 doz chewing tobacco, 10 doz ½ pt flasks, 10 garden rakes, 14 scythe snaths, 66 lbs Y H tea, 30 lbs black tea, 202 lbs Y H tea, 19 lbs black tea, 322 lbs Y H tea, 27 hay forks, 11½ doz hoes and handles, 25 scoop shovels, 6 scoop shovels, 17 shovels, 18 spades, 6 shovels, 19 spades, 34 scythe refles, 24 scythe stones, 12½ doz bowls, 21 pitchers, 3 tea pots, 2 sugar bowls, 3 chambers, 2 do and covers, 1 tub full of vials, 1 counter scale and weights, 1 butter tub, 9 lbs linen twine, 75 lbs madder, 50 lbs batting, 63 straw bonnets, 46 straw hats, 3 palm hats, 3 boys straw hats, 41 leghorn hats, 24 lbs starch, 30 lbs pepper, 43 lbs spice, 9 p ladies gaiters, 6 p miss do, 8 p h'f do, 10 p morocco slips, 3 p morocco buskins, 6 p ladies gaiters, 14 p thick soled buskins, 44 boxes percussion caps, 9 shoe brushes, 1 parasol, 7 p moccasins, 1 bot cologne, 4 p scissors, 11 p shears, 2 setts G S tea spoons, 3 setts G S table spoons, 3 clothes brushes, 1 hair brush, 3 hat brushes, 2 tob boxes, 1 box charcoal paste, 12 wallets, 71 pen holders, 44 coarse combs, 30 lead pencils, 11 embroid' needles, 15 sticks sealing wax, 4 pocket books, 6 pocket mem'd books, ½ gross slate pencils, 2⅓ gross slate pencils, 1 tooth brush, 6 doz thimbles, 11 p needles, 2 small setts, 3 setts shirt studs, 1 pocket case, 76⅓ yds lawn, 1 p blankets, 7 yds blue merino, 14 yds green merino, 10½ yds drab do, 2 yds cambric, 4 dox combs, 2 show cases, 50 lbs putty, ⅔ bbl mackerel, 40 lbs butter, 162 gal molasses, 16 gal lamp oil, 1 gal alcohol, 25 gal molasses, 48 gal oil, 7 gal turpentine, 2 tin cans, 14 butter firkins, 19 butter tubs, 1,700 lbs bro sugar, 5 kegs pure lead, 2 spades, 1 sledge, 1 anvil, 12 tin measures, 7 tunnels, 2 counter scales and weights, 2 platform scales, 212 yds fringe, 67 yds do, 15¼ yds do fringe, 38 yds fringe, 115 yds cord, 27 yds fringe, 26 yds cord, 30 yds footing, 32 yds cot edging, 1 p su edging, 27 yds, 9 yds cambric insertion, 36 ps ribbon, 187 ps ribbon, 6 doz hile combs, 9 belt ribbons, 6 pr shell combs, 1 roll twist, 1 glove stretcher, 1 silk dress hkf, 1 plume, 2 $^{6}_{16}$ lbs sewing silk, 3 sett gilt buttons, 29 p children gloves, 14 comb hkf, 11 p silk mitts, 1 doz neck ribbons, 1 bunch silk cord, 6 lace collars, 12 head springs, 8 lace collars, 6 steel clasps, 4 p specs, 1 box thimbles, 10½ yd velvet ribbons, 12 pencils, 14 yds ribbons, 31½ yds ribbons, 8 yds binding, 12 p elastics, 1½ ps worsted braid, 3 silk braids, 4 ps bonnet wire, 87 doz silk dress buttons, 3½ doz steel pens, 15 white pearl buttons, 12 doz hair pins, 16 studs, 1 gross steel pens, 1 $^{7}_{2}$ doz cot floss, 4 $^{8}_{2}$ doz spools silk, 4 pocket combs, 7 bunches beads, one doz blk h and eyes, 4 tooth brushes, 1 box buckles, 2 silver T combs, 24 gross pearl buttons, and nine gross pearl buttons, all being of great value, to wit, of the value of ten thousand dollars; and then and there kept the same pursuant to the command of said writ; and the said goods and chattels being so attached and kept by the said plaintiff as marshal as aforesaid, by virtue of the said writ, the said defendants, for the purpose of obtaining a release of the said goods and chattels from the said writ, and a redelivery of the same to the said Henry D. Huff, afterwards, and before the return of the said writ, to wit, on the twentieth day of March, in the year last aforesaid, to wit, at the district aforesaid, by their certain writing

obligatory, sealed with their seals, and now shown to the court here, the date whereof is a certain day and year above named, to wit, the day and year aforesaid, acknowledged themselves to be held and firmly bound unto the said Champion I. Hutchinson, marshal as aforesaid, in the sum of five thousand and six hundred dollars, parcel of the sum above demanded to be paid to the said Hutchinson, which said writing obligatory was and is subject to a certain condition thereunder written, whereby, after reciting to the following effect, to wit, that the said William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips, had (then) lately commenced a suit in the United States district court, for the district of Wisconsin, against the said Henry D. Huff, for the recovery of the sum of twenty-seven hundred and ninety-six dollars and twenty-seven cents, as claimed by them, which suit was commenced by attachment; it was conditioned, that if, therefore, the said defendant, Henry D. Huff, should well and truly pay or cause to be paid any judgment which might be recovered by the said plaintiff (naming the said William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips) in said suit commenced by said attachment as aforesaid, within sixty days after such judgment should be rendered, then that obligation to be void, otherwise in full force and virtue, as by said writing obligatory and the condition thereof will more fully appear and at large appear; and the said plaintiff in fact saith, that upon the execution and delivery to him for the use aforesaid of said writing obligatory, to wit, on the day and year last aforesaid, and at the place last aforesaid, he did deliver unto the said defendant, Henry D. Huff, the said goods and chattels aforesaid. And the said plaintiff in fact further saith, that afterwards, to wit, on the thirteenth day of July, in the year one thousand eight hundred and fifty, to wit, at the district aforesaid, such proceedings were had in the said suit commenced by the said writ of attachment in the said district court of the United States, for the district of Wisconsin, wherein the said William W. Hurlburt, Joseph A. Sweetzer, Philiph Van Valkenburgh, and George S. Phillips were plaintiffs, and the said Henry D. Huff was defendant; that by the judgment and consideration of the said court before the judge thereof, the said William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips recovered against the said Henry D. Huff as well the sum of two thousand eight hundred and sixty-four dollars and forty-eight cents for their damages, as the sum of ninety-three dollars and twenty cents for their costs and charges about their said suit in that behalf expended, amounting together to the sum of two thousand nine hundred and fifty-seven dollars sixty-eight cents, whereof the said Henry D. Duff was convicted, as by the said record and proceedings in said suit now remaining in said court, before the judge thereof, more fully appears.

And the said plaintiff in fact further saith, that the said Henry D. Huff did not pay the said sum of two thousand nine hundred and fifty-eight dollars and four cents, the amount of said judgment so as aforesaid recovered against him by the said William W. Hurlburt, Joseph A.

Sweetzer, Philip Van Valkenburg, and George S. Phillips, within sixty days after the rendition of the said judgment, and hath not yet paid the same, or any part thereof, but therein hath wholly failed; by means thereof, and by force of the statute in such case made and provided, an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said sum of five thousand and six hundred dollars, parcel of the said sum above demanded.

And whereas, also, heretofore, to wit, on the seventh day of March, in the year one thousand eight hundred and fifty, at the said district of Wisconsin, the said William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips sued and prosecuted out of the district court of the United States, for the district of Wisconsin, against the said defendant, Henry D. Huff, a certain other writ, called a writ of attachment, directed to the marshal of said district of Wisconsin, by which said last mentioned writ the said marshal of the said district, was commanded to attach so much of the lands, tenements, goods, chattels, moneys, and effects of the said Henry D. Huff, not exempt from execution, wheresoever the same might be found within his district as would be sufficient to satisfy the demand of the said William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips, and safely keep the same, to satisfy any judgment that might be recovered by the said William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips; and also to summon the said Henry D. Huff to be and appear before the said district court, at Milwaukie, on the first Monday of April (then next) ensuing, and then and there to answer unto the said William W. Hurlburt, Joseph A. Sweetzer, Philip Van Walkenburgh, and George S. Phillips, in a plea of trespass on the case upon promises to their damage, five thousand dollars, which then and there should be made to appear, and of the said writ to make due return; which said last mentioned writ afterwards, and before the return thereof, to wit, on the eleventh day of March, in the year last aforesaid, to wit, at the district of Wisconsin aforesaid, was delivered to the said plaintiff, who then and from thence, until and at and after the time of the making of the writing obligatory hereinafter mentioned, was marshal of the district of Wisconsin, in due form of law to be executed. By virtue of which said last mentioned writ the said plaintiff, so being marshal of the district of Wisconsin as aforesaid, afterwards, and before the return of the said last mentioned writ, to wit, on the day and year last aforesaid, and in said district of Wisconsin, as such marshal, to wit, at the city of Kenosha, in said district of Wisconsin, did attach divers other goods and chattels of the said Henry D. Huff, then and there being, not exempt from execution, of the like number, quantity, quality, description, and value, as the said goods and chattels in the said first count mentioned, and then and there kept the same pursuant to the command of the said writ; and the said last mentioned goods and chattels, being so attached and kept by the said plaintiff as marshal as aforesaid, by virtue of the said last mentioned writ, the said defendants, for the purpose of obtaining a

release of the said last mentioned goods and chattels from the said last mentioned writ, afterwards, and before the return of the said last mentioned writ, to wit, on the twentieth day of March last aforesaid, to wit, at the district aforesaid, by their certain other writing obligatory, signed by the said defendants, Henry D. Huff, John Bullen, (by the name of John Bullen, jr.,) and Samuel Hale, and sealed with their seals, and now shown to the court here, the date whereof is a certain day and year above named, to wit, the day and year last aforesaid, acknowledge themselves to be held and firmly bound unto the said plaintiff in the sum of five thousand six hundred dollars, parcel of the sum above demanded, to be paid to the said plaintiff; which said last mentioned writing obligatory was and is subject to a certain condition thereunder written, whereby, after reciting to the following effect, to wit, that the said William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips, had then lately commenced a suit in the United States district court, for the district of Wisconsin, against the said Henry D. Huff, for the recovery of the sum of twenty-seven hundred and ninety-six dollars and twenty-seven cents, as claimed by them, which suit was commenced by attachment, it was conditioned that if therefore the said defendant, Henry D. Huff, should well and truly pay, or caused to be paid, any judgment which might be recovered by the said plaintiffs, (meaning the said William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips,) in said suit commenced by said attachment as aforesaid, within sixty days after such judgment should be rendered, then that obligation to be void, otherwise in full force and virtue, as by said last mentioned writing obgatory, and the condition thereof, will more fully and at large appear. And the said plaintiff in fact saith, that upon the execution and delivery to him of said last mentioned writing obligatory, to wit, on the day and year last aforesaid, and at the place last aforesaid, he did release the goods and chattels last aforesaid from all lien and operation of said last mentioned writ of attachment. And the said plaintiff in fact further saith, that afterwards, to wit, on the thirteenth day of July, in the year one thousand eight hundred and fifty, to wit, at the district aforesaid, such proceedings were had in the said suit, commenced by the said last mentioned writ of attachment, in the said district court of the United States, for the district of Wisconsin, wherein the said William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips, were plaintiffs, and the said Henry D. Huff was defendant, that by the judgment and consideration of the said court, before the judge thereof, the said William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips, recovered against the said Henry D. Huff as well the sum of two thousand eight hundred and sixty-four dollars and forty-eight cents, for their damages, as the sum of ninety-three dollars and twenty cents for their costs and charges about their said suit in that behalf expended, amounting together to the sum of two thousand nine hundred and fifty-seven dollars and sixty-eight cents, whereof the said D. Huff was convicted, as by the said record and pro-

ceedings in said suit, now remaining in said court, before the judge thereof, more fully appears. And the said plaintiff in fact further saith, that the said Henry D. Huff did not pay the said sum of two thousand nine hundred and fifty-eight dollars and four cents, the amount of said last mentioned judgment so as aforesaid recovered against him by the said William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips, within sixty days after the rendition of said judgment, and hath not yet paid the same, or any part thereof, but therein hath wholly failed; by means whereof, and by force of the statute in such case made and provided, an action hath accrued to the said plaintiff to demand and have of and from the said defendants the said sum of five thousand six hundred dollars, other parcel of the said sum above demanded, to the damage of the said plaintiff of five hundred dollars, and therefore he brings suit, &c.

O. S. HEAD,
Plaintiff's attorney.

And afterwards, to wit, on the sixth day of January, A. D. 1851, came the said defendants, by their attorneys aforesaid, and filed their plea and affidavit as follows:

United States district court, for the district of Wisconsin, of the first Monday of October, A. D. 1850.

HENRY D. HUFF, John Bullen, and Samuel Hale, ads. CHAMPION I. HUTCHINSON, who sues for the use of William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips.

And the said defendants, Henry D. Huff, John Bullen, and Samuel Hale, in their own proper persons, come and defend the wrong and injury, when, &c., and say that the court here ought not to take or have cognizance of or sustain the action aforesaid, because they say that at the time of the commencement of this suit the said defendants, and each and every of them, were, and ever since that time have been, and still are, citizens of the State of Wisconsin, to wit, at the city of Kenosha, in the said State of Wisconsin; that the said plaintiff, Champion I. Hutchinson, at the time of the commencement of this suit, also was, and for a long time, to wit, for the space of five years previous thereto, had been, and for a long time, to wit, for the space of three months thereafter, continued to be a citizen of the said State of Wisconsin, to wit, at the city of Kenosha aforesaid, and not a citizen of any other State of the United States, nor an alien or subject of any foreign kingdom, state, sovereignty, or government whatever; and this the said defendants are ready to verify. Wherefore they pray judgment if the

the said court here will take any cognizance of or sustain the action aforesaid, &c.

HENRY D. HUFF,
JOHN BULLEN,
SAMUEL HALE,

United States district court, for the district of Wisconsin.

HENRY D. HUFF, John Bullen, & Samuel Hale, ads.
CHAMPION I. HUTCHINSON, who sues for the use of William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, & George S. Phillips.

DISTRICT OF WISCONSIN, *ss.*

Henry D. Huff, one of the defendants in this cause, being duly sworn, says, that the foregoing plea in this cause is true, in substance and matter of fact, to his best knowledge and belief; and further says not

HENRY D. HUFF.

Subscribed and sworn to, this 4th day of January, A. D. 1851, before me,

VOLNEY FRENCH,
Com'r for U. S. district court, for the dist. of Wisconsin.

And afterwards to wit, on the seventh day of said month of January, A. D. 1851, came the said plaintiff, by his said attorneys, and filed his demurrer to the plea of the said defendant, as follows:

District court of the United States, for the district of Wisconsin.

CHAMPION I. HUTCHINSON, for the use of William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips,
vs.
HENRY D. HUFF, John Bullen, & Samuel Hale.

Of the term of January, in the year eighteen hundred and fifty-one.

And the said plaintiff saith, that the said plea of the said defendants, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to abate the writ of the said plaintiff, and that he, the said plaintiff, is not bound by the law of the land to answer the same, and this he is ready to verify; wherefore, for want of a sufficient plea in this behalf, the said plaintiff prays judgment, and that the said defendants may answer further to the said declaration, &c. O. S. HEAD, *Plaintiffs' att'y.*

I certify that, in my opinion, the above demurrer is well founded.
N. J. EMMONS, *of counsel.*

And same day came the said defendants, by their said attorneys, and filed their joinder in the demurrer herein filed, as follows:

District court, United States, for the district of Wisconsin.

HENRY D. HUFF, John Bullen, & Samuel Hale, ads.
CHAMPION I. HUTCHINSON, who sues for the use of Wm. W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips.

January term, 1851.

And the said defendants say, that the said plea of the said defendants, and the matters therein contained, are sufficient in law to quash the said writ; and which said plea, and the matters therein contained, the said defendants are ready to verify and prove as the court here shall direct, &c. Wherefore, inasmuch as the said plaintiff hath not denied, nor in any manner answered the said plea, the said defendants, as before, pray judgment, if the court here will take cognizance of or sustain the action aforesaid, &c.

HENRY D. HUFF,
JOHN BULLEN, and
SAMUEL HALE,
Defendants.

And afterwards, to wit, at a stated term of the district court of the United States of America, for the district of Wisconsin, begun and held according to law, at the city of Milwaukie, on the first Monday (being the sixth day) of January, A. D. 1851, present, the honorable Andrew G. Miller, judge of said court presiding; on the fourth day of the said term, to wit, on the ninth day of said month of January, A. D. 1851, the following proceedings were had, to wit:

CHAMPION I. HUTCHINSON, for the use of William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips,
vs.
HENRY D. HUFF, John Bullen, & Samuel Hale. } At law.

This day the demurrer of the plaintiff, to the plea in abatement of the said defendants, came on to be heard, and was argued by counsel, and the same is held under advisement.

And afterwards, to wit, on the seventh day of the said term, to wit, on the thirteenth day of said month of January, A. D. 1851, the following other proceedings were had, to wit:

CHAMPION I. HUTCHINSON, for the use of William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips,
vs.
HENRY D. HUFF, John Bullen, & Samuel Hale. } At law.

This day came the plaintiffs, by their counsel, and moved the court

for leave to amend the declaration herein filed; and the same being submitted, on consideration whereof, it is ordered by the court that the said motion be, and is hereby, granted, and amendments allowed.

And afterwards, to wit, on the eighth day of the said term, to wit, on the fourteenth day of said month of January, A. D. 1851, the following other proceedings were had, viz:

CHAMPION I. HUTCHINSON, for the use of William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips,
vs.
HENRY D. HUFF, John Bullen, & Samuel Hale. } At law.

This day came the parties, by their counsel, and the court doth adjudge and order that the demurrer of the said plaintiff to the plea in abatement of the said defendants be, and is hereby, allowed and sustained; and that the said defendants plead to the declaration of the said plaintiffs by the first Monday of February next.

And afterwards, to wit, on the twenty-second day of February, A. D. 1851, came the said defendants, by their said attorneys, and craved oyer of the writing obligatory in the said declaration mentioned, as follows:

District court of the United States, district of Wisconsin.

CHAMPION I. HUTCHINSON, who sues for the use of Wm. W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips,
vs.
HENRY D. HUFF, John Bullen, & Samuel Hale.

And now comes the said defendants, and craves oyer of the said writing obligatory, in the said declaration mentioned, by

H. B. TOUSLEE, *Attorney.*

Which said writing obligatory is in the words and figures following, to wit:

Know all men by these presents, that we, Henry D. Huff, as principal, and John Bullen, junior, and Samuel Hale, as sureties, are held and firmly bound unto Champion I. Hutchinson, United States marshal for the State of Wisconsin, and his successors in office, in the penal sum of five thousand and six hundred dollars, lawful money of the United States of America; for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assigns, each and every of them, firmly by these presents.

In witness whereof we have hereunto set our hands, and affixed our seals, this 20th day [of] March, A. D. 1850.

The condition of the above obligation is such, that whereas William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips, have lately commenced a suit in the United States

district court, for the district of Wisconsin, against Henry D. Huff, for the recovery of the sum of twenty-seven hundred ninety-six dollars and twenty-seven cents, as claimed by them; which suit is commenced by attachment.

Now, therefore, if the said defendant, Henry D. Huff, shall well and truly pay, or cause to be paid, any judgment which may be recovered by the said plaintiff in said suit, commenced by said attachment as aforesaid, within sixty days after such judgment shall be rendered, then the above obligation to be null and void, otherwise in full force and virtue.

HENRY D. HUFF, [SEAL.]
JOHN BULLEN, Jr., [SEAL.]
SAMUEL HALE. [SEAL.]

And afterwards, to wit, on the seventh day of April, A. D. 1851, being the first Monday of April and a rule day of this court, came the said plaintiff, and entered in the rule book the default of the said defendants, as follows:

CHAMPION I. HUTCHINSON, for the use of William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips,
vs.
HENRY D. HUFF, John Bullen, and Samuel Hale. } 7 April, 1851.

The defendants having failed to plead to the declaration within the time prescribed by the order entered herein on the 14th January, 1851, now, on motion of O. S. Head, att'y for plaintiff, ordered that the default of said defendants, for the want of a plea, be and the same is hereby entered.

O. S. HEAD, *Att'y for plaintiff.*
Per EMMONS, "

And afterwards, to wit, on the fifteenth day of April, A. D. 1851, came the said defendants, by their said attorneys, and filed their motion to set aside the default heretofore entered, as follows:

United States district court, for the district of Wisconsin.

HENRY D. HUFF, John Bullen, and Samuel Hale, ads.
CHAMPION I. HUTCHINSON, who sues for the use William W. Hurlburt et others.

April special term, 1851.

And now comes the said defendants, and move the court now here to set aside the default entered against the defendants in this cause, for the following reasons, to wit:

The said default was entered by the plaintiff after oyer of the bond

on which this action is founded, had been duly craved, and without first furnishing such oyer to the defendants.

CHATFIELD,
Of counsel for defendants.

And afterwards, to wit, at a special term of said court, begun and held according to law, in the city of Milwaukie, on the second Monday (being the fourteenth day) of April, A. D. 1851. Present, the honorable Andrew G. Miller, judge of said court, presiding; on the fifth day of the term, to wit, on the eighteenth day of said month of April, A. D. 1851, the following other proceedings were had, to wit:

CHAMPION I. HUTCHINSON, for the use of William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips,
vs.
HENRY D. HUFF, John Bullen, and Samuel Hale. } At law.

This day came the parties, by their counsel, and by consent it is ordered by the court that the default heretofore entered against these defendants be and is hereby vacated. The defendants appeared and filed their pleas, as follows:

District court of the United States, for the district of Wisconsin.

HENRY D. HUFF, John Bullen, and Samuel Hale, ads.
CHAMPION I. HUTCHINSON, who sues for the use of William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and Geo. S. Phillips.

April special term, 1851.

And the said defendants, by Chatfield and Touslee, their attorneys, come and defend the wrong and injury, when, &c., and say that they do not owe the said sum of money above demanded, or any part thereof, in manner and form as the said plaintiffs have above thereof complained against them, and of this they, the said defendants, put themselves upon the country, &c.

CHATFIELD & TOUSLEE,
Attorneys for defendants.

And to the said plea was annexed an affidavit of merits, as follows:

United States district court, for the district of Wisconsin.

HENRY D. HUFF, John Bullen, and Samuel Hale, ads.
CHAMPION I. HUTCHINSON, who sues for the use of William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and Geo. S. Phillips.

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

Henry D. Huff being duly sworn says, that he is one of the defendants in the above entitled cause; that he has fully and fairly stated this case to the counsel for the defendants therein; and that the said defendants have a good and substantial defence on the merits in this suit as this deponent is advised by the said counsel, and verily believes, and further says not.

HENRY D. HUFF.

Subscribed and sworn to this 17th day of April, A. D. 1851, before me—

GEO. S. WEST, *Clerk.*

And (also same day) the issue herein joined came on to be tried; whereupon a jury was called to try the same, who came, to wit, Francis W. Hawley, George O. Tiffany, Cicero Comstock, William Seaman, George H. Walker, Jonathan Learned, William H. Byron, Milo Hard, Jesse McCoy, Smith R. Tucker, James Farr, jr., and Joseph C. James, twelve free, honest, and lawful men of the district, who were severally sworn, empannelled, and charged by the court. The said jurors of the jury aforesaid, upon their said oaths respectively, do find for the said plaintiffs the sum of two thousand eight hundred and sixty four dollars and forty-eight cents debt, as the said plaintiffs have herein declared for, and the further sum of two hundred and forty-six dollars and twenty-eight cents, the damages for the detention thereof. And the same day came the defendants, by their counsel, and moved the court that the judgment on the verdict in this cause be arrested for reasons filed; which said motion is in the words following, to wit:

District court of the United States, for the district of Wisconsin.

April special term, 1851.

HENRY D. HUFF, John Bullen, and Samuel Hale, ads.
CHAMPION I. HUTCHINSON, who sues for the use of William W. Hurlburt and others.

And now comes the defendants by Chatfield, their counsel, and move the court now here, that the judgment on the verdict in this cause be arrested for the following reasons:

1st. Because the declaration does not show that this court had jurisdiction of the parties in the suit commenced by attachment, and in which the judgment specified in the said declaration was rendered.

2. Because the declaration does not show that the marshal had lawful authority to levy the attachment mentioned therein.

3. Because the verdict is not according to, or authorized by, the declaration. It should have been, if for the plaintiff, for the penalty of the bond as debt, and the amount of the judgment, interest, and costs as damages.

4. Because the recovery is for a sum greater than is claimed by the ad damnum of the declaration.

CHATFIELD, *for def'ts.*

And afterwards, to wit, on the tenth day of the said term, to wit, on twenty-fourth day of April, A. D. 1851, the following other proceedings were had, to wit:

CHAMPION I. HUTCHINSON, for the use of William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips,
vs.
HENRY D. HUFF, John Bullen, and Samuel Hale.
} At law.

This day came the parties by their counsel; and the motion of defendants, made at a previous day in arrest of judgment, being submitted, it is considered and ordered by the court that the said motion be, and is hereby, overruled. And further, it is considered and adjudged by this court now here, that the said Champion I. Hutchinson, for the use of William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips, do have and recover of the said Henry D. Huff, John Bullen, and Samuel Hale, the said debt of two thousand eight hundred and sixty-four dollars and forty-eight cents, as well as the sum of two hundred and forty-six dollars and twenty-eight cents, the damages so found and assessed as aforesaid, amounting in the whole to the sum of three thousand one hundred and ten dollars and seventy-six cents, together with thirty-eight dollars and eighteen cents, their costs about their said suit in this behalf by them expended, and that they have execution therefor.

And afterwards, to wit, on the thirteenth day of the said term, to wit, on the twenty-eighth day of said month of April, A. D. 1851, the following other proceedings were had, to wit:

CHAMPION I. HUTCHINSON, for the use of William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips,
vs.
HENRY D. HUFF, John Bullen, and Samuel Hale.
} At law.

This day the court settled and signed a bill of exceptions in this cause, and ordered that the same be filed and made part of the record in this cause; which said bill of exceptions is in the words and figures following, to wit:

District court of the United States, for the district of Wisconsin.

April special term, 1851. Bill of exceptions.

HENRY D. HUFF, John Bullen, and Samuel Hale, ads.
CHAMPION I. HUTCHINSON, who sues for the use of William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, jr., and Perry S. Phillips.

Afterwards, to wit, on the eighteenth day of April, A. D. 1851, at the court-room of the district court of the United States, for the district of Wisconsin, in the city of Milwaukie, in said district, before the honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, comes, as well the said Champion I. Hutchinson, who sues for the use of William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, jr., and George S. Phillips, Norman J. Emmons, their counsel, as the said Henry D. Huff, John Bullen, and Samuel Hale, by A. P. Chatfield, their counsel; and the jurors of the jury, whereof mention is within made, being called, likewise come; and after being elected, tried, and sworn to try the issue within joined, the counsel for the plaintiff, to maintain the said issue on his part, offered to read and give in evidence to the court and jury a bond, of which the following is a copy:

Know all men by these presents, that we, Henry D. Huff, as principal, and John Bullen, junior, and Samuel Hale, as sureties, are held and firmly bound with Champion I. Hutchinson, United States marshal for the district of Wisconsin, and his successor in office, in the penal sum of five thousand and six hundred dollars, lawful money of the United States of America; for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assigns, each and every of them, firmly by these presents.

In witness whereof we have hereunto set our hands, and affixed our seals, this 20th day of March, A. D. 1850.

The condition of the above obligation is such, that whereas William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips, have lately commenced a suit in the United States district court, for the State of Wisconsin, against Henry D. Huff, for the recovery of the sum of twenty-seven hundred and ninety-six dollars and twenty-seven cents, as claimed by them; which suit is commenced by attachment.

Now, therefore, if the said defendant shall well and truly pay, or cause to be paid, any judgment which may be recovered by the said plaintiff in said suit commenced by said attachment as aforesaid, within sixty days after such judgment shall be rendered, then the above obligation to be null and void, otherwise [to remain] in full force and virtue.

HENRY D. HUFF, [L. S.]
JOHN BULLEN, Jun., [L. S.]
SAMUEL HALE. [L. S.]

To the introduction or reading of such bond, as evidence, counsel

for the defendant did then and there object, for the following reasons, viz:

1st. Because of the variance of the bond described in the declaration, and the bond so offered in evidence. The bond described in the declaration is alleged to have been given to "Champion I. Hutchinson as aforesaid," viz., marshal of the district of Wisconsin; the bond offered in evidence purports, in terms, to have been given to Champion I. Hutchinson, United States marshal, for the State of Wisconsin, and his successor in office.

2d. Because the bond offered in evidence is void, and affords no cause or ground of action. It being a bond taken by the marshal in virtue of his office, and not otherwise, it must describe the office in virtue of which he took it correctly, according to the legal or statutory designation of the office, and there is no such officer known to the laws of the United States as "United States marshal, for the State of Wisconsin;" the bond purporting to have been given to the marshal, in virtue of process in his hands as such to be served, should have described, but does not describe, correctly, and according to the legal and statutory designation, the court issuing the process, to show that the court was a lawfully constituted court of competent jurisdiction to issue the process, and whose mandate the marshal had authority to execute, and was bound to obey.

Whereupon the counsel for the plaintiff did insist, that there was no variance between the bond described in the declaration and the bond offered in evidence, and that it was a lawful and valid bond.

And the said judge of the said district court did then and there give his opinion, and decide that there was no variance between the bond described in the declaration and the bond offered in evidence; that the bond offered in evidence was a good and lawful bond, and the said objections to the said bond were not well taken. To which opinion and decision of the said judge the counsel for the defendants did then and there except. Thereupon, in pursuance of the said decision of the said judge, the said bond was read in evidence to the jury.

The counsel for the plaintiff then offered and proposed to read in evidence to the court and jury a certain writ of attachment, of which the following is a copy:

DISTRICT OF WISCONSIN, *ss.*

[L. S.] The President of the United States of America, to the marshal of the district of Wisconsin, greeting:

You are hereby commanded to attach so much of the lands, tenements, goods, chattels, moneys, and effects of Henry D. Huff, not exempt from execution, wheresoever the same may be found within your district, as will be sufficient to satisfy the demand of William *M.* Hurlburt, Joseph A. Sweetzer, Philip Van Valkenbergh, and George S. Phillips, and safely keep the same, to satisfy any judgment that may be recovered by the said William W. Hurlburt, Joseph A. Sweetzer,

Philip Van Valkenbergh, and George S. Phillips; and also to summon the said Henry D. Huff to be and appear before the district court of the United States of America, for the district of Wisconsin aforesaid, at Milwaukie, on the first Monday of April next ensuing, and then and there to answer unto the said William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenbergh, and George S. Phillips, in a plea of trespass on the case, upon promises, to their damage five thousand dollars, which shall then and there be made to appear; and of this writ make due return.

Witness the honorable Andrew G. Miller, judge of the district court of the United States, at the city of Milwaukie, in the district of Wisconsin, this 7th day of March, in the year of our Lord one thousand eight hundred and fifty, and of the independence of the United States the seventy-fourth.

GEO. S. WEST, *Clerk.*

O. S. HEAD, *Attorney.*

To the introduction and reading of the said writ of attachment in evidence, the counsel for the defendants did then and there object, for the following reasons, viz:

Because it is not the writ of attachment mentioned and described in the said bond; the writ mentioned in the bond was a writ by which a suit was commenced in "the United States district court, for the district of Wisconsin;" the writ offered in evidence is a writ purporting to have been issued out of the "district court of the United States, for the district of Wisconsin." The claim in the writ of attachment mentioned in the bond was $2,796 27; the claim in the writ of attachment offered in evidence is $5,000.

Whereupon the counsel for the plaintiff did insist that the writ of attachment offered in evidence was the same writ mentioned in the said bond, and that there was no variance between the description of the writ in said bond and the writ offered in evidence.

And the said judge did then and there give his opinion, and decide, that the writ offered in evidence is the same writ mentioned in the said bond, and that there was no variance between the writ described in the bond and the writ offered in evidence, and overruled the said objections to the said writ; to which opinion and decision the said defendants, by their counsel, did then and there except, and thereupon the said writ of attachment was read in evidence to the jury.

The counsel for the plaintiff then offered and proposed to read in evidence, to the court and jury, a paper, purporting to be an affidavit annexed to the said writ of attachment, of which the following is a copy:

STATE OF NEW YORK,
City and county of New York, ss.

William W. Hurlburt, one of the firm of Hurlburt, Sweetzer & Co., of the said county, being by me first duly sworn, on oath says, that

Henry D. Huff, merchant, of Southport, in the State of Wisconsin, is indebted unto William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenbergh, and George S. Phillips, who together compose the firm [of] Hurlburt, Sweetzer & Co., in the sum of two thousand seven hundred and ninety-six dollars and twenty-seven cents, over and above all legal set off; that the same is due upon express contract, that is to say, upon a promissory note, made and executed by said Henry D. Huff, dated New York, April 24th, 1849, and payable to said William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenbergh, and George S. Phillips, by the name and style of Hurlburt, Sweetzer & Co., who are now the lawful holders and owners of said note. And this deponent further saith, that he has good reason to believe, and doth verily believe, that the said Henry D. Huff is about fraudulently to convey and dispose of his property, or a part of it, with intent to defraud his creditors; and further saith not

WILLIAM W. HURLBURT.

Subscribed and sworn before me, at the city of New York, this 21st of February, 1850.

MOSES B. MACLAY, [L. S.]
Wisconsin comm'r in N. York, to take affidavits, &c., duly confirmed and qualified.

To the introduction and reading of the said affidavit, as evidence in this cause, the defendants, by their said counsel, did then and there object, for the following reasons, viz:

1st. The paper so offered, and purporting to be an affidavit, is not an affidavit at all, and did not authorize the marshal to execute the said writ, or justify him in assuming to execute it; it has no name known to the laws and court of the United States, nor was it taken before an officer having authority to take affidavits to be used in this court. Perjury could not be assigned upon it.

2d. If good as an affidavit, it does not show an existing indebtedness against the defendant, in the attachment in favor of the plaintiffs therein at the time when the writ was issued, or cause at that time for the issuing of the writ of attachment.

3d. It is not alleged, or in any manner stated in the declaration in this suit, that such affidavit, or any affidavit, was ever made by the plaintiffs in the writ of attachment, or either of them, or by any person in their behalf, and annexed to the said writ of attachment before it was executed by the marshal, or at any other time; that the execution of the writ of attachment, without an affidavit annexed, as required by the law, would be void, and a trespass.

Whereupon the plaintiffs, by their counsel aforesaid, did insist that the said paper, so offered in evidence, was a good, legal, and valid affidavit; that it did show an existing indebtedness and cause *cause* for the attachment against the defendant therein, and in favor of the plaintiffs therein, at the time when the attachment was issued; and that it

was not necessary to allege or set forth, in the declaration in this suit, that an affidavit was made by the plaintiffs, or either of them, or by any person in their behalf, and annexed to the writ of attachment before it was executed by the marshal; but that the fact that an affidavit was so made and annexed to the writ, before its execution by the marshal, was inferred in the statement and allegations of the issuing and service of the attachment, as set forth in the declaration in this suit.

And the said judge did then and there give his opinion, and decide, that the said paper, so offered in evidence, was a good and valid affidavit for the purpose of being annexed to the said writ of attachment, and was sufficient to authorize the said marshal to execute the said writ, and to justify him in the execution of it; that it did show an indebtedness and cause for the issuing the said writ of attachment at the time when it was issued, and that it was not necessary to allege and set forth, in the declaration in this suit, that an affidavit was made and annexed to the said writ of attachment before it was executed by the marshal; but that the fact was implied and comprehended in the statement and allegations contained in the declaration, of the issuing and service of the attachment, and overruled the said objections to the said paper purporting to be an affidavit, and so offered in evidence. To which opinion and decision of the said judge the defendants, by their said counsel, did then and there except.

And thereupon, in pursuance of such opinion and decision, the said paper, purporting to be an affidavit, was read in evidence to the jury.

The said plaintiffs, by their counsel, then offered and proposed to read in evidence the marshal's return to the said writ of attachment endorsed thereon, of which the following are copies, viz.: March 11th, 1850, I certify that I have executed the within writ by seizing the goods and merchandise of the within named defendant, an inventory whereof is herewith returned, and that the appraisers, viz., R. B. Towslee and E. B. Tradewell, two freeholders, were sworn first by me, and appraised the said merchandise as is set down in the schedule and appraisement signed by them, herewith returned. I further certify, that I did, on the 30th day of March, 1850, serve the within writ on the said defendant by delivering to him, personally, a true copy thereof, with a copy of said inventory. And the said goods were returned to the said defendant upon his bond for the delivery of the goods as per hereunto annexed.

C. J. HUTCHINSON, *Marshal*,
Per S. B. SCOTT, *Dep. marshal.*

I, Samuel B. Scott, deputy marshal, do hereby certify, that the said writ was levied by C. J. Hutchinson, marshal, on or before the return day thereof, and that a copy of the inventory was served on the defendant by me, on the 3d day of April, A. D. 1850. I made the return under date of March 30th, having understood from the defendant, and from what was told me by the marshal, that the defendant waived

the service of the inventory until such time as it could be prepared. Milwaukie, April 16th, 1850.

S. B. SCOTT,
Deputy marshal.

To the introduction and reading of the said return in evidence to the court and jury the defendants, by their counsel aforesaid, did then and there object, for the following reasons:

1st. The return does not show that the bond on which this suit is brought is the bond taken by the marshal in the release of the property from the attachment, but on the contrary shows that the bond on which the goods were released, was a bond of an entirely different penalty, condition, and character. The bond mentioned in the officer's return is a bond conditioned for the return of the property attached, and should, by the statutes, have been in the penalty of double the value of the goods attached, which value, as appears by the inventory and appraisal, was over $7,000. The bond described in the declaration and the bond read in evidence on this trial, is in the penalty of $5,600, conditioned for the payment of whatever judgment should be obtained in the suit commenced by the attachment within sixty days after it should be rendered.

2d. The said returns do not show that the writ was lawfully served on the defendant therein, but on the contrary show that a copy of the inventory was not served till after the return day of the writ. That omission ipso facto released the levy of the attachment, and as a consequence any bond which had been given to release the goods from the attachment.

Whereupon the counsel for the plaintiffs did then and there insist that the returns did show that the bond on which the suit is brought is the bond taken by the marshal on the return of the property to the defendant, in the attachment that the marshal's description of the bond in the return was controlled and overcome by the fact stated in the return, that the bond was annexed to the writ, and that the returns did show a lawful and sufficient service of the said writ of attachment. And the said judge did then and there give his opinion and decision that the bond on which this suit is brought, being annexed to the said writ of attachment, is the bond referred to in the said return, and that the said returns did show a lawful and sufficient service of the said writ of attachment, and overruled the said objections to the said returns. To which decision and opinion of the said judge the said defendants, by their counsel, did then and there except; thereupon, in pursuance of the said decision of the said judge, the said returns were read in evidence to the jury.

The plaintiff, by his counsel, then introduced and read in evidence to the jury the record and proceedings of a judgment in the suit commenced by the said writ of attachment, in which the said William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenbergh, and George A. Phillips were plaintiffs, and the said Henry D. Huff was defendant,

for $2,864 48 damages and $93 20 costs, which judgment was returned and rendered on the 13th day of July, 1850, by assessment of damages by the clerk on default and interlocutory judgment against the said defendant, Henry D. Huff.

And therefore the said plaintiffs, by his counsel, rested his cause.

It was then admitted on the part of the plaintiff that previous to the commencement of this suit the said Champion I. Hutchinson had vacated and ceased to hold the said office of marshal of the district of Wisconsin, and that at and before the time of the commencement of this suit Lester H. Cotton was and still is marshal of said district.

Thereupon the defendant, by their counsel aforesaid, objected and insisted that this action, or any action on the bond described in the declaration in this suit, or on the bond which had been read in evidence upon this trial, could not be maintained in the name of the said Champion I. Hutchinson, either as late marshal of the said district or individually, and that if the defendants are liable at all on the bond the writ to enforce that liability, without any assignment of the bond, must be brought in the name of the marshal in office at the time of the commencement of the suit.

Whereupon the plaintiff, by his said counsel, did then and there insist that the action was properly brought in the name of the said Hutchinson as late marshal, and that the persons for whose use the action was brought were entitled to maintain it, and obtain judgment in the name of the said Hutchinson as late marshal, for their use; and that, tho' they might, they were not bound to use the name of the successor in office at the time of the commencement of the suit. And the said judge did then and there give his opinion and decide, that though he had doubts upon the question, &c., thought that the action might be maintained in the name of the said Hutchinson, as late marshal, and thereupon he overruled the said objection on the part of the said defendant, to a recovery in this suit in the name of the said Hutchinson, as late marshal of the said district; to which opinion and decision of the said judge the defendants, by their counsel aforesaid, did then and there except.

The evidence being thereupon closed, the court did then and there instruct the jury that the plaintiff was entitled to recover this suit, the amount of the said judgment against the said Huff for damages and costs, and the interest on the damages from the day the said judgment was rendered; to which instruction of the court to the jury the counsel for the defendants did then and there except.

The jury did, without leaving their seats, find and render a verdict for the plaintiff in the form following:

The jury find for the plaintiff $2,864 48 debt, as the said plaintiff have herein declared for, and the further sum of $246 28, two hundred and forty-six dollars and twenty-eight cents, the damages for the detention thereof. And the said verdict having been received and recorded by the court, the defendants, by their counsel aforesaid, moved

the court that judgment on the verdict in this cause be arrested, for the following reasons:

1st. Because the declaration does not show that this court had jurisdiction of the parties in the suit commenced by attachment, and in which the judgment specified in the said declaration was rendered.

2d. Because the declaration does not show that the marshal had lawful authority to levy the attachment mentioned therein.

3d. Because the verdict is not according to, or authorized by, the declaration. It should have been, if for the plaintiff, for the penalty of the bond, as debt, and the amount of the judgment and interest and costs, as damages.

4th. Because the recovery is for a sum greater than is claimed by the ad damnum of the declaration.

And the parties, by their respective counsel, submitted the said motion in arrest of judgment to the court without argument.

Afterwards, to wit, on the 24th day of April aforesaid, before the judge aforesaid, came the parties aforesaid, by their respective attorneys aforesaid; and the said judge having deliberated upon the said motion in arrest of judgment, did then and there, to wit, on the day and at the place last aforesaid, give his opinion and decide thereon that the said motion be, and the same is hereby overruled; to which decision and ruling the defendant, by his counsel, excepted.

And because none of the exceptions so offered and made to the opinions and decisions of the said judge do appear upon the record of the said trial; therefore, on the prayer of the said defendant, by their said counsel, the said judge has to this bill of exceptions set his seal, according to the statute in such case made and provided, this 28th day of April, in the year of our Lord one thousand eight hundred and fifty-one.

A. G. MILLER. [SEAL.]

And afterwards, to wit, on the first day of May, A. D. 1851, came the parties, by their counsel, in accordance to notice served; and the costs were taxed to the plaintiff and against the defendants for the sum of thirty-eight dollars and eighteen cents, and same day judgment roll filed.

And afterwards, to wit, on the first day of September, A. D. 1851, came the said plaintiff, by his said attorneys, and filed his precipe for a writ of execution, as follows:

U. S. COURT.

CHAMPION I. HUTCHINSON, for the use of William W. Hurlbert, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips,
vs.
HENRY D. HUFF, John Bullen, and Samuel Hale.

Please issue fi. fa. in the above entitled suit, returnable the first Monday of October.

O. S. HEAD,
Atty. for plff.

Whereupon an execution issued to the marshal, returnable the first Monday of October, as follows:

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

The President of the United States of America, to the marshal of the district of Wisconsin, greeting:

You are hereby commanded that, of the goods and chattels of Henry D. Huff, John Bullen, and Samuel Hale, in your district, you [SEAL.] cause the sum of three thousand one hundred and ten dollars and seventy-six cents, which Champion I. Hutchinson, for the use of William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George W. Phillips, lately in the district court of the United States, for the district of Wisconsin aforesaid, recovered against them for his damages, which he had sustained on occasion of the non-performance of certain promises and undertakings; and also thirty-eight dollars and eighteen cents, which were awarded to the said Champion I. Hutchinson, for the use of William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips, for his costs and charges by him about his suit in that behalf expended, whereof the said Henry D. Huff, John Bullen, and Samuel Hale were convicted, as appears to us of record; and if sufficient goods and chattels cannot be found, then you are hereby commanded that you cause the amount of such judgment, as aforesaid, to be made of the lands and tenements of said Henry D. Huff, John Bullen, and Samuel Hale, which they shall have had at the time of the docketing of such judgment, to wit, on the first day of May, one thousand eight hundred and fifty-one, or at any time afterwards, in whose hands soever the same may be; and have you that money before the judge of the said district court, at Milwaukie, on the first Monday of October next, then and there to render to the said Champion I. Hutchinson, for the use of William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips, for his damages and costs aforesaid. And if sufficient property to satisfy this writ cannot be levied, you are further commanded to attach in the hands of the said Henry D. Huff, John Bullen, and Samuel Hale, or any other person or persons, all property, real or personal, goods and chattels, moneys, choses in action, and all equitable interests of the said Henry D. Huff, John Bullen, and Samuel Hale in the same; and have you then and there this writ.

Witness hon. Andrew G. Miller, judge of the district court of the United States, for the district of Wisconsin, at the city of Milwaukie,

in the said district of Wisconsin, this second day of September, in the year of our Lord one thousand eight hundred and fifty-one, and of the independence of the United States the seventy-sixth.

B. K. MILLER, *Clerk.*

And afterwards, to wit, on the fourth day of said month of September, A. D. 1851, came the said defendants, Henry D. Huff, John Bullen, and Samuel Hale, and filed their bond, with George C. Manny and John V. Ayer as sureties, in the sum of seven thousand dollars, conditioned that the said Henry D. Huff, John Bullen, and Samuel Hale shall prosecute their writ of error to effect, and answer all damages and costs if they shall fail to make good their plea; which said bond was afterwards endorsed by the judge as follows: "Oct. 6, 1841; approved, A. J. Miller, judge."

And afterwards, to wit, on the sixth day of said month of September, A. D. 1851, a citation and writ of error issued, and also a "copy lodged in pursuance of the statute of the United States in such case made and provided for the above named Champion I. Hutchinson, William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips, defendants in error."

And afterwards, to wit, at a special term of said court, begun and held according to law at the United States court-room in the city of Milwaukie, and within said district of Wisconsin, on the first Monday (being the fourth day) of August, A. D. 1851; present, the honorable Andrew G. Miller, judge of said court, presiding; on the third day of the term, to wit, on the sixth day of October, A. D. 1851, the following proceedings were had, to wit:

CHAMPION I. HUTCHINSON, who sues for the use of William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips, } At law.
vs.
HENRY D. HUFF, John Bullen, and Samuel Hale.

This day came the said defendants by their counsel, and moved the court for an order of supersedeas of the execution in this case, and the same was submitted by the counsel of the respective parties. On consideration whereof, and it not appearing that the writ of error had been issued and served according to law within ten days after judgment, it is ordered by the court that the said motion be and is hereby overruled; the bond for writ of error being presented to the judge, and same day approved. The said motion for supersedeas is as follows:

In district court of the United States, for the district of Wisconsin.

HENRY D. HUFF, John Bullen, and Samuel Hale, ads.
CHAMPION I. HUTCHINSON, who sues for the use of William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips.

And now the said Henry D. Huff, John Bullen, and Samuel Hale

come and move this court for an order of supersedeas of the fieri facias issued in this cause, upon the judgment obtained in said cause in favor of Champion I. Hutchinson, who sues for the use of William W. Hurlburt et al. against the above named defendants.

CHATFIELD & TOUSLEE,
Attorneys for defendants.

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

Wallace Mygatt, a deputy marshal of said district, being duly sworn, says, that on the 8th day of October, 1851, at the city of Kenosha, in said district, he served the annexed citation on Orson S. Head, esq., the attorney for the defendants in error therein named, by personally showing the same to him, and delivering to him a true copy thereof, certified by me as such deputy marshal. And further this deponent says not.

WALLACE MYGATT,
Deputy U. S. marshal.

Subscribed and sworn to this 22d day of October, A. D. 1851, before me.

VOLNEY THEVELE,
U. S. district court commissioner.

UNITED STATES OF AMERICA, *ss.*

To Champion I. Huchinson, William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the district court of the United States of America, for the district of Wisconsin, wherein Henry D. Huff, John Bullen, and Samuel Hale are plaintiffs, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in this behalf.

Witness the honorable Andrew G. Miller, judge of the district court of the United States, for the district of Wisconsin, this sixth day of September, in the year of our Lord one thousand eight hundred and fifty one, and of the independence of the United States the seventy-sixth.

A. G. MILLER.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the judge of the district court of the United States, for the district of Wisconsin, greeting:

Because in the record and proceedings, as also in the rendition of the

judgment of a plea which is in the said district court, before you, or some of you, between Champion I. Hutchinson, who sues for the use of William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips, plaintiffs, and Henry D. Huff, John Bullen, and Samuel Hale, defendants, a manifest error hath happened to the great damage of the said Henry D. Huff, John Bullen, and Samuel Hale, as is said, and as appears by their complaint; we being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the first Monday of December next, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this sixth day of September, in the year of our Lord one thousand eight hundred and fifty-one, and of the independence of the United States the seventy-sixth.

[SEAL]

BENJAMIN K. MILLER,
Clerk of the district court of the United States of America, for the district of Wisconsin.

Supreme Court of the United States, of December term, A. D. 1851.

HENRY D. HUFF, John Bullen, and Samuel Hale, plaintiffs in error,
vs.
CHAMPION I. HUTCHINSON, who sues for the use of William W. Hurlburt, Joseph A. Sweetzer, Phillip Van Valkenburgh, and George S. Phillips, defendants in error.

Afterwards, to wit, on the second Tuesday of December, in the year of our Lord one thousand eight hundred and fifty-one, in this same term, before the chief justice and associate justices of the Supreme Court of the United States of America, at the Capitol, in the city of Washington, come the said Henry D. Huff, John Bullen, and Samuel Hale, by Andrew G. Chatfield, their attorney, and say, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit, that the declaration aforesaid, and the matters therein contained are not sufficient in law for the said Champion I. Hutchinson, who sued for the use of William W. Hurlburt, Joseph A. Sweetzer, Phillip Van Valkenburgh, and George S.

Phillips, to have and maintain his aforesaid action thereof against the said Henry D. Huff, John Bullen, and Samuel Hale; and there is also error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said Champion I. Hutchinson, who sued for the use of William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips, against the said Henry D. Huff, John Bullen, and Samuel Hale, whereas by the law of the land the said judgment ought to have been given for the said Henry D. Huff, John Bullen, and Samuel Hale, against the said Champion I. Hutchinson, who sued for the use of William W. Hurlburt, Joseph A. Sweetzer, Philip Van Valkenburgh, and George S. Phillips; and the said Henry D. Huff, John Bullen, and Samuel Hale pray that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that they may be restored to all things which they have lost by occasion of the said judgment, &c.

AND'W G. CHATFIELD,
Attorney for plaintiffs in error.